IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

MFA.No. 1296 of 1994()

OPMV.1410/1991 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOLLAM
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APPELLANTS/PETITIONERS:
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1. SYAMALA KUMARI, AGED 34, W/O.SURESH BABU, SARADALAYAM, PAYIKUZHY, OCHIRA P.O.

2. DHANIL BABU, AGED 10 YEARS, S/O.SURESH BABU.

3. DHANYA, AGED 6 ½ YEARS, D/O.SURESH BABU OF -DO- -DO-.

4. SARADA, AGED 53 YEARS OF -DO- -DO-.

(MINOR APPELLANTS 2 AND 3 ARE REPRESENTED BY MOTHER AND GUARDIAN THE 1ST APPELLANT)

BY ADV. SRI.C.J.JOY
SRI.SHEEJO CHACKO
SRI.SUNNY XAVIER

RESPONDENTS/RESPONDENTS :
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1. THOMAS MATHEW, S/O.PHILIPOSE MATHEW, PADINJATTE MURUPPEL, KUMBARA, PATHANAMTHITTA.

2. JOSEPH, S/O.GEOVARGHESE DANIEL, KOZHAVAKKADU PUTHEN VEEDU, VAYYATHUPUZHA MURI, ANAPPARA, CHITTAR VILLAGE, PATHANAMTHITTA.

3. M/S.NATIONAL INSURANCE COMPANY LTD., DIVISIONAL OFFICE, HOSPITAL ROAD, KOLLAM.

BY ADV. SRI.GEORGE CHERIAN FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.1296 OF 1994

Dated 28th May, 2007

JUDGMENT

Koshy,J.

Husband of the first appellant died in a motor accident. Apart from the widow he left behind two minor children, father and mother. They filed an application for compensation claiming an amount of Rs.5,00,000/=. While the deceased was riding a motor cycle with his brother-in-law as pillion rider on 22.4.1991, a mini lorry insured by the third respondent insurance company hit the motor cycle and he succumbed to the injuries. The deceased was earlier employed as a Crane Operator in Gulf Countries and it is contended that at the time of accident he was employed as a construction contractor. Even though Rs.2,500/= was claimed as monthly income, only Rs.2,000/= was taken by the Tribunal. We note that even though he was 37 year old at the time of the accident, 18 was taken as the multiplier. Therefore, even if multiplicand is little lower, considering the higher multiplier taken by the Tribunal we are not interfering with the total compensation calculated. However, we note that the Tribunal found that there is contributory negligence on the part of the deceased. We are of the opinion that there is no

basis for such a finding. Police registered crime against the driver of the mini lorry. Ext.A1 is the F.I.R., Ext.A2 is the Charge Sheet, Ext.A3 is the Scene Mahazar, Ext.A4 is the vehicle mahazar and Ext.A5 is the A.M.V.I. report. PW2 is the eye witness. He saw the occurrence and he stated that the accident occurred due to the negligence of the driver of the offending vehicle. No counter evidence is adduced. Merely on the basis of the scene mahazar exact position of the vehicle at the time of accident cannot be found out. Driver of the mini lorry was not examined. No other eye witness was also examined. Evidence in this case shows that only the driver of the mini lorry was negligent. Therefore, 20% contributory negligence attributed on the deceased is set aside. The Tribunal calculated a compensation of Rs.3,00,000/=, but, only Rs.2,40,000/= was awarded as compensation after deducting Rs.60,000/= due to contributory negligence (20%). Since we have set aside the finding of contributory negligence, third respondent is directed to deposit Rs.60,000/=, over and above the decreed amount, with 9% interest from the date of application till its deposit. On deposit of the amount, Rs.15,000/= is allowed to be withdrawn by the first appellant. Balance amount should be deposited in equal proportion in a

Nationalised Bank in the name of appellants 2 and 3. Appellant No.2, the son, can withdraw the amount when he attains the age of 21 and appellant No.3 is allowed to withdraw the amount at the time of her marriage.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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